



Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010

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Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010

Date introduced: 2 June 2010

House: House of Representatives

Portfolio: Special Minister of State

Commencement: This clause specifies that sections 1 to 3 commence upon Royal Assent. Schedules 1 and 2 commence on a single day to be fixed by Proclamation or, if not proclaimed earlier, 6 months following Royal Assent.

Links: The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The main purpose of the Bill is to amend the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* (Cth) so as to:

- Expand the authorisation requirements for how-to-vote cards, and
- Expand misleading and deceptive publication provisions to include material published on the internet and telephone.¹

Both measures seek to increase the level of transparency in election campaign advertising so that voters may be better informed of the nature of the political material they receive.

Background

Recent controversies concerning how-to-vote cards

The practice of political parties distributing election material such as how-to-vote cards outside polling places has become common in federal and state elections. Aspects of the use of those cards are governed by legislation in each jurisdiction. From time to time the content, authorisation and distribution of how-to-cards has been the subject of controversy and legal action. The main issues with how-to-vote cards have been that some cards have been misleading and the behaviour of political party workers that distribute them. The

1. G Gray, 'Second reading: Electoral and Referendum (How-to-Vote Cards and Other Measures) Bill 2010', House of Representatives, *Debates*, 2 June 2010, p. 13.

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amount of paper they consume and the cost of how-to-vote cards has also attracted some criticism in the past.²

Following the state election in South Australia on 20 March 2010, a number of allegations were raised about the distribution of misleading how-to-vote cards, the impersonation of polling place workers, the impersonation of voters and the conduct of polling officials. On 13 May 2010, these matters were referred to the Joint Standing Committee on Electoral Matters (JSCEM).³ However, the motion was not supported by the Government. On speaking against the motion the Special Minister of State, Senator Ludwig, tabled possible amendments to the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act), designed to clarify the law in relation to how-to-vote cards. On 2 June 2010, those amendments were introduced into the House of Representatives as part of the current Bill. The new measures concerning misleading or deceptive publication over the telephone or internet follow allegations arising from the state election in Tasmania.

Basis of policy commitment

In introducing the Bill the Parliamentary Secretary for Western and Northern Australia, the Hon. Gary Gray MP, stated that the amendments were aimed at providing voters ‘the means of making informed decisions when voting’.⁴ The proposals to include the internet and telephone within the legislative definition of ‘publish’ were designed to expand the law in relation to the publication of material ‘that is likely to mislead or deceive an elector in relation to the casting of a vote’.⁵

Broader electoral reform agenda

The Bill is part of the Government’s broader electoral reform agenda. In December 2008 the Government issued a green paper examining electoral finance reform issues, and in September 2009 a second green paper was issued examining broader electoral reform issues.⁶ Both green papers identified reform possibilities and invited comment.

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2. Issues concerning the use of how-to-vote cards have been raised in a number of previous reports of JSCEM. See below for a further discussion.
 3. Terms of reference and other inquiry documentation, including the inquiry report, are available at the Committee website: viewed 10 June 2010, <http://www.aph.gov.au/house/committee/em/SA%20Election/index.htm>. Submissions close 23 July 2010.
 4. G Gray, ‘Second reading: Electoral and Referendum (How-to-Vote Cards and Other Measures) Bill 2010’, House of Representatives, *Debates*, 2 June 2010, p. 13.
 5. Section 329 (1), *Commonwealth Electoral Act 1918*.
 6. Australian Government, *Electoral Reform Green Paper—Donations, Funding and Expenditure*, Canberra, December 2008, viewed 18 February 2010,

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In 2008 and 2009 the Government introduced Bills making significant changes to the law relating to electoral funding, political donations, disclosure and reporting, and certain offences and penalties.⁷ The 2008 Bill was defeated in the Senate in March 2009 and the 2009 Bill, which is a revised version of the 2008 Bill, was introduced and passed in March 2009 in the House of Representatives and is currently before the Senate.

On 11 February 2010, the Government introduced the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 into the House of Representatives. The Bill contained the provisions to:

- fix the seventh day after the issue of federal election writs as the date for the close of rolls
- repeal the evidence of identity requirements for provisional electors and provide for a signature checking procedure
- make provision for electronic updating of electors' details
- enable the Australian Electoral Commission (AEC) to process enrolment transactions outside the electoral division for which a person is enrolling
- 'enable pre-poll votes cast in an elector's 'home' division to be cast and counted as ordinary votes, wherever practicable'
- 'restrict the number of candidates that can be endorsed by a political party in each Division',⁸ and
- enable electronic voting for sight-impaired electors⁹

http://www.dpmc.gov.au/consultation/elect_reform/docs/electoral_reform_green_paper.pdf; Australian Government, *Electoral Reform Green Paper—Strengthening Australia's Democracy*, Canberra, September 2009, viewed 18 February 2010, http://www.dpmc.gov.au/consultation/elect_reform/strengthening_democracy/docs/strengthening_australias_democracy.pdf

7. Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009. These Bills and associated documentation, including Bills Digests, can be accessed at:
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs627%22> (2008 Bill),
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4073%22> (2009 Bill)
8. Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 1.
9. Supplementary Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 2.

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The close of rolls and evidence of identity requirements for provisional electors measures in the Bill were opposed by the Opposition.¹⁰ The Bill was passed by the House of Representatives on 10 March 2010 and introduced into the Senate on 15 March 2010. It is expected to be withdrawn from the Senate.

Also introduced in the House of Representatives on 2 June 2010 were three other electoral and referendum Bills:

- Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010, to advance the contentious components of the previous Bill, the close of rolls and evidence of identity requirements for provisional electors measures.
- Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Bill 2010, to advance the other, non-controversial components of the previous Bill.
- Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010, to introduce a series of operational changes to, *inter alia*, make better use of electronic and online facilities.¹¹

Committee Consideration

The Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 and the current Bill, were referred to the Senate Finance and Public Administration Committee for inquiry and report. The Committee tabled its report on 17 June 2010, and recommended that the Bill be passed.¹²

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10. J Hockey, 'Second Reading: Electoral and Referendum (Close of Rolls and Other Measures) Bill 2010', House of Representatives, *Debates*, 25 February 2010, pp. 7–9.
 11. G Gray, 'Second reading speech: Electoral Referendum (How-to-Vote Cards and Other Measures) Bill 2010', House of Representatives, *Debates*, 2 June 2010, p. 13, viewed 3 June 2010, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=BillId_Phrase%3Ar4387%20Title%3A%22second%20reading%22%20Content%3A%22I%20move%22%7C%22and%20move%22%20Content%3A%22be%20now%20read%20a%20second%20time%22%20\(Dataset%3Ahansards%20%7C%20Dataset%3Ahansards\);querytype=:rec=0;resCount=](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=BillId_Phrase%3Ar4387%20Title%3A%22second%20reading%22%20Content%3A%22I%20move%22%7C%22and%20move%22%20Content%3A%22be%20now%20read%20a%20second%20time%22%20(Dataset%3Ahansards%20%7C%20Dataset%3Ahansards);querytype=:rec=0;resCount=)
 12. Terms of reference and other inquiry documentation, including the inquiry report, are available at the Committee website: viewed 17 June 2010, http://www.aph.gov.au/Senate/committee/fapa_ctte/electoral_bills/index.htm

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Opposition and minor party positions

The Opposition indicated its general support for the Bill, but tabled amendments to increase the penalties relating to the proposed how-to-vote cards measures.¹³ Those amendments were not adopted by the House.¹⁴ In additional comments to the Senate Committee inquiry into the Bill, Australian Greens leader, Senator Bob Brown, recommended that the Bill be amended to, among other things, reduce the voting age to 16, enable adequate funding for youth electoral programs, and include truth in political advertising provisions.¹⁵ As yet, there is no indication of the independent and Family First Party positions on the Bill.

Financial implications

The Government estimates that there are no costs associated with implementation of the proposed amendments.¹⁶

Summary of key measures in the Bill

Schedule 1— How-to-vote cards

Current law and proposed amendments

How-to-vote cards fall within the electoral advertising provisions of the Electoral Act. The law requires that the contact details of the person who had authorised the material, and the printer, be included at the end of the material. The main section of relevance is subsection 328(1) which provides that:

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13. A Robb, 'Second reading speech: Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010', House of Representatives, *Debates*, 15 June 2010, pp. 34–35, viewed 16 June 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-06-15%2F0057%22>; A Robb, amendments to the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010.
 14. Australia, House of Representatives, *Votes and proceedings*, proof, no. 168, 16 June 2010, p. 1856.
 15. Senate Finance and Public Administration Legislation Committee, Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 [Provisions] Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 [Provisions], June 2010, p. 19, viewed 17 June 2010, http://www.aph.gov.au/Senate/committee/fapa_ctte/electoral_bills/report/report.pdf
 16. Explanatory Memorandum, Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010, p. 1.

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(1) A person shall not print, publish or distribute or cause, permit or authorize to be printed, published or distributed, an electoral advertisement, handbill, pamphlet, poster or notice unless:

(a) the name and address of the person who authorized the advertisement, handbill, pamphlet, poster or notice appears at the end thereof; and

(b) in the case of an electoral advertisement, handbill, pamphlet, poster or notice that is printed otherwise than in a newspaper--the name and place of business of the printer appears at the end thereof.

The amendments in the Bill propose to:

- insert a definition of ‘how-to-vote card’ into the Electoral Act
- require that the name and address of the person who authorised the card be placed at the top of each printed face of the material
- if the card was produced for an endorsed candidate of a registered political party, require that the name of that political party must be included on the card
- if the card was produced for a candidate who is not a member of a registered political party, require that the word ‘candidate’ must be printed on the card next to the name
- specify the size of the font to be used, at 10–20 points depending on the size of the card, and
- introduce two new offences for those who do not comply with the authorisation requirements and for those who publish or distribute how-to-vote cards with false authorisation details. (The maximum penalty is 10 penalty units or \$1,100 in each case).

The amendments follow the Queensland legislative approach.¹⁷

Previous consideration by the Electoral Matters Committee

How-to-vote cards did not feature as a prominent issue in the JSCEM report on the 2007 federal election. However, in his Second reading speech, the Parliamentary Secretary noted that the Government was ‘mindful of the views expressed’ in the JSCEM report on the 1998 federal election.¹⁸ In that report, tabled on 26 June 2000, the Committee noted particular concerns about the historically vexed issue of second preference how-to-vote cards, those designed by one party to attract the second preference votes of electors who

17. AEC, Submission to the Senate Finance and Public Administration Committee, *Inquiry into the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 6.

18. G Gray, ‘Second reading: Electoral and Referendum (How-to-Vote Cards and Other Measures) Bill 2010’, House of Representatives, *Debates*, 2 June 2010, p. 13.

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support another party.¹⁹ The Committee observed a decision of the Queensland Court of Disputed Returns concerning the division of Macquarie following the 1993 federal election and other complaints about second preference how-to-vote cards used in the 1998 election. The Committee recommended that the regulation of how-to-vote cards include a broad definition of the cards to include narrative material, that the authorisation details include the name of the party or candidate producing the card be displayed prominently on each side of the card.²⁰

In a dissenting report, the then Opposition (Labor) members of JSCEM argued that the problem of differing laws and practices in relation to how-to-vote cards, across nine jurisdictions, was of greater concern. It proposed two alternative recommendations, that JSCEM ‘initiate a cooperative interstate parliamentary committee’ to look at harmonising how-to-vote card regimes across the country, and that the AEC conduct a trial, at a by-election, of displaying how-to-vote cards in individual polling booths rather than have them handed out outside polling places.²¹

In its response to the majority report of the Committee, the Government argued that the definition of how-to-vote cards was adequately addressed in existing legislation and that the further recommendations about the display of authorisation details on the cards was ‘too prescriptive and unnecessary’.²²

Australian National Audit Office Report 2009

Previously, public funding in the form of parliamentarians’ entitlements, has been used as supplementary funding for the production and distribution of postal vote applications. In 2009 the Australian National Audit Office (ANAO) released a performance audit on the administration of parliamentarians’ entitlements. In relation to the use of entitlements for producing how-to-vote material, the ANAO noted that 43 Members of the House of Representatives or 29 per cent ‘used their printing entitlement to produce a total of 4.6 million ‘how to vote’ cards for the 3.97 million registered voters in the electorates represented by those Members’.²³ The Government accepted all of the recommendations

19. JSCEM, *The 1998 federal election: report of the inquiry into the 1998 federal election and matters related thereto*, JSCEM, June 2000, p. 38, viewed 15 June 2010, <http://www.aph.gov.au/house/committee/em/elect98/report.htm>

20. Recommendation 19, JSCEM, *The 1998 federal election: report of the inquiry into the 1998 federal election and matters related thereto*, JSCEM, June 2000, p. 41.

21. JSCEM, *The 1998 federal election: report of the inquiry into the 1998 federal election and matters related thereto*, JSCEM, June 2000, p. 166.

22. Government Response to JSCEM, *The 1998 federal election: report of the inquiry into the 1998 federal election and matters related thereto*, tabled 1 March 2001, p. 8.

23. ANAO, ‘Administration of Parliamentarians’ Entitlements by the Department of Finance and Deregulation, *Performance Audit Report No. 3 2009–10*, ANAO, September 2009, p. 163; also see, ANAO, ‘The Australian Electoral Commission’s Preparation for and Conduct

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from the ANAO report including ending the use of printing entitlements for electioneering.²⁴

Alternative reforms?

The broad policy options for dealing with how-to-vote cards include banning them outright, banning just second preference cards, banning all misleading cards and/or regulating them all.²⁵ Other possible reforms to how-to-vote cards that have been canvassed include:

- empowering the presiding officer of a polling booth to enforce aspects of the Electoral Act, which may include the power to confiscate how-to-vote cards deemed to be misleading, as suggested to JSCEM following the 2001 election.²⁶
- requiring that the AEC approve all how-to-vote cards prior to election day, as required in Queensland and Victoria.²⁷
- requiring that how-to-vote cards include the full flow of preferences (rather than just a first preference which could encourage the casting of informal votes), as required in Victoria.²⁸
- regulating the behaviour of political party workers who hand out how-to-vote material.²⁹

of the 2007 Federal General Election', *Performance Audit Report No. 28, 2009–10*, ANAO, April 2010, p. 153.

24. J Ludwig (Special Minister of State), *Reform of parliamentary entitlements*, media release, 8 September 2009, viewed 9 September 2009; http://www.smos.gov.au/media/2009/mr_352009.html
25. AEC, Submission to the Senate Finance and Public Administration Committee, *Inquiry into the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 5.
26. JSCEM, *The 2001 federal election: report of the inquiry into the conduct of the 2001 federal election and matters related thereto*, 2003, p. 195; also see Australian Government, *Electoral Reform Green Paper—Strengthening Australia's Democracy*, Canberra, September 2009, p. 159.
27. Australian Government, *Electoral Reform Green Paper—Strengthening Australia's Democracy*, Canberra, September 2009, p. 159.
28. Democratic Audit of Australia, Submission to the Senate Finance and Public Administration Committee, *Inquiry into the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 4.
29. Associate Professor Graeme Orr, AEC, Submission to the Senate Finance and Public Administration Committee, *Inquiry into the Electoral and Referendum Amendment (How-to-*

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- working towards a standardisation or harmonisation of regimes in relation to how-to-vote cards.³⁰
- providing that how-to-vote cards be registered with the AEC prior to election day, as required in New South Wales.³¹

Registration of how-to-vote cards?

Academic Associate Professor Graeme Orr outlined some of the benefits for registering how-to-vote cards:

[Registration] has the benefit of educating campaigners, by bringing them into the administrative net ahead of polling day. More importantly, it gives the Commissions and parties advanced notice of material, allowing time for a considered challenge to any dubious material. It also offers a cleaner path to polling day enforcement for Commission staff: unregistered material can be readily identified and its withdrawal requested, on the spot, by polling officials, without drawing them into subjective or difficult arguments about whether the material is misleading or the true source of its authoriser.³²

In its submission to the Senate Finance and Public Administration Committee, the AEC argued that pre-registration systems for how-to-vote cards may be manageable in a single jurisdiction, with a limited number of candidates, in one time zone. However, at the federal level, such a system would raise a number of practical difficulties and divert resources from its core election activities.³³

Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010, p. 1.

30. A Murray, AEC, Submission to the Senate Finance and Public Administration Committee, *Inquiry into the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 1; JSCEM, *The 1998 federal election: report of the inquiry into the 1998 federal election and matters related thereto*, JSCEM, June 2000, p. 166.
31. New South Wales Electoral Commission, 'Election Materials Including How-to-vote Cards', 2009, available at: www.elections.nsw.gov.au/state_government_elections/how_to_vote_cards
32. Associate Professor Graeme Orr, AEC, Submission to the Senate Finance and Public Administration Committee, *Inquiry into the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 1.
33. AEC, Submission to the Senate Finance and Public Administration Committee, *Inquiry into the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 5.

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Who authorises the cards

The Senate Finance and Public Administration Committee also heard that the proposed new provisions may not adequately cover circumstances where a supporter of a political party claims to have authorised how-to-vote cards themselves. Professor Orr offered an alternative definition of the term ‘authorised by or on behalf of’ so as to deem a party or candidate to have authorised a card where they meet all or part of the cost of producing the card.³⁴

Adequacy of new penalties

According to the proposal, the maximum penalty for how-to-vote cards that do not comply with the specified requirements, including font size, is 10 penalty units or \$1100. Contravention of the proposed provisions relating to the publication of false authorisation details is the same, at 10 penalty units. However, the penalty for misleading or deceptive publications, under subsection 329(4) is set somewhat higher at \$1000, six months imprisonment or both. Professor Orr suggested that, as false authorisation may also constitute a misleading publication, the new penalty of 10 penalty units under subsection 328B(5), relating to the publication of false authorisation details, appears inadequate alongside the penalty for misleading or deceptive publications.³⁵

The Opposition considered the new penalties as generally inadequate in relation to the seriousness of the offence. Their amendments to the Bill proposed to increase the new penalties to 50 penalty units or \$5500. Those amendments were not adopted by the House.³⁶

Some previous controversies with second preference how-to-vote cards

2001 Federal election

Following the 2001 federal election, JSCEM heard that the Unity candidate in the electorate of Barton, Mr John Lau, distributed a how-to-vote card with an order of preference different to that authorised by his own party. The federal member for Barton, the Hon. Robert McClelland MP, claimed that this ‘induced or, at the very least, had the

34. Associate Professor Graeme Orr, AEC, Submission to the Senate Finance and Public Administration Committee, *Inquiry into the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 2.

35. Associate Professor Graeme Orr, AEC, Submission to the Senate Finance and Public Administration Committee, *Inquiry into the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, pp. 1-2.

36. House of Representatives, Votes and Proceedings, no. 168, 16 June 2010.

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potential to induce people to record a vote that was not in accordance with their understanding and, accordingly, intention'.³⁷ However, the AEC found that the cards were properly authorised under law and submitted to JSCEM that 'it had no powers to resolve what was in essence an internal dispute within the Unity Party'.³⁸

2004 Federal election

In its submission to the JSCEM inquiry into the 2004 federal election, the National Party claimed that in the electorate of Richmond, the 'Liberals for Forests' booth workers, wearing blue t-shirts with the word 'Liberals' emblazoned prominently on the front, handed out how-to-vote cards and asked voters to 'vote Liberal' as they entered the polling place.³⁹ The Liberals for Forests had directed their preferences to the Labor candidate. The result was one of the closest of the 2004 Federal Election with a winning margin of only 301 votes after the distribution of preferences. Only 151 people needed to be misled to affect the result. The Committee concluded that Ms Justine Elliot was elected as a result of preferences on the basis of deceptions by Liberals for Forests.⁴⁰

The Committee also received complaints that how-to-vote cards for a Liberal Party candidate in Melbourne Ports resembled those of the Australian Greens candidate.⁴¹ The Committee considered that the Liberal party how-to-vote cards distributed in that electorate were not misleading.⁴²

2010 South Australian State election

At the 2010 state election in South Australia, Labor campaign workers were reported to have handed out 'put your FAMILY FIRST' how-to-vote cards in the seats of Mawson, Morialta, Light and Hartley. The cards included photographs of Family First candidates and recommended that Family First supporters give Labor their second preference. A representative from the Family First Party argued that the cards were a 'deliberate and blatant attempt to solicit Family First votes to Labor when there was no preference

37. R McClelland, submission to JSCEM, *Inquiry into the 2001 federal election and matters related thereto*, no. 81, p. 2.

38. AEC cited in, JSCEM, *Inquiry into the 2001 federal election and matters related thereto*, 24 June 2003, p. 135.

39. The National Party of Australia, Submission to the Joint Standing Committee on Electoral Matters, *Inquiry into the 2004 federal election and matters related thereto*, 31 March 2005, <http://www.aph.gov.au/house/committee/em/elect04/subs/sub092.pdf>

40. Joint Standing Committee on Electoral Matters, *Inquiry into the 2004 federal election and matters related thereto*, Commonwealth of Australia, Canberra, 10 October 2005, p. 119, <http://www.aph.gov.au/house/committee/em/elect04/report/chapter5.pdf>

41. *Ibid.*, p. 121.

42. *Ibid.*

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arrangements'.⁴³ As noted above, these matters and others were referred to JSCEM for inquiry and report. Submissions close 23 July 2010.⁴⁴

Schedule 2—Misleading or deceptive publication

Under current legislation, publications that are likely to mislead or deceive an elector in relation to the casting of a vote are prohibited. The Electoral Act and the Referendum Act both define the word 'publish' to include radio or television.⁴⁵ The new measures proposed in the Bill aim to expand the definition of publish to include not only radio and television, but also the internet and telephone. The amendments also cover material published on the internet from Australian citizens or residents located overseas.⁴⁶

According to the AEC submission to the Senate Finance and Public Administration Committee, the amendments follow concerns raised by the Greens about certain alleged misleading activities prior to the Tasmanian state election.⁴⁷ Two days before that election, it was reported that the Australian Labor Party had made 20 000 'robocalls' or automated telephone messages. According to the report, the messages alleged that the Greens supported the legalisation of heroin, a claim which was later denied by the Greens. The report also stated that the telephone messages did not include a statement that they were authorised by the Australian Labor Party.⁴⁸

While the intention of the proposed amendments is to clarify the law by including the telephone and internet under the meaning of 'publish' it may be that those forms of publication were already covered. The word publish is not exhaustively defined under the

43. G Lower and M Owen, 'Family First slams Labor's dirty tricks', *The Australian*, 22 March 2010, p. 7; also see L Megarrity, *The South Australian election 2010*, Background note, 8 June 2010, 2009–10, Parliamentary Library, Canberra, viewed 16 June 2010, <http://www.aph.gov.au/Library/pubs/BN/pol/SAElection2010.pdf>

44. Terms of reference and other inquiry documentation, including the inquiry report, are available at the Committee website, viewed 10 June 2010, <http://www.aph.gov.au/house/committee/em/SA%20Election/index.htm>

45. See for example, subsection 329(6) of the *Commonwealth Electoral Act 1918*.

46. Explanatory Memorandum, Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010, p. 4.

47. AEC, Submission to the Senate Finance and Public Administration Committee, *Inquiry into the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 6.

48. M Rout, 'Fury over anonymous ALP calls', *The Australian*, 18 March 2010, p. 6; also see S Bennett, *Tasmanian election 2010*, Background note, 9 June 2010, 2009–10, Parliamentary Library, Canberra, viewed 16 June 2010, <http://www.aph.gov.au/Library/pubs/BN/pol/TasmanianElection2010.pdf>

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Electoral Act and the Referendum Act.⁴⁹ It could be argued that the inclusion of ‘radio or television’ under current provisions are to be regarded as illustrative rather than exhaustive.

Main provisions

Schedule 1 – How-to-vote cards

Item 1 inserts a definition of a ‘how-to-vote’ card into subsection 4(1) the Electoral Act for the first time. It will include a card, handbill or pamphlet that:

- represents a ballot paper or part of a ballot paper and is ‘apparently’ intended to affect or is likely to affect how votes are cast for candidates, or
- lists the names of candidates with a number indication the order of voting preference against the names of all or any of such candidates, or
- otherwise directs or encourages votes to use a particular order of preference for all or any of the candidates.

Item 6 will insert **new subsections 328B(1) to (6)** into the Electoral Act stipulating the requirements relating to how-to-vote cards. The requirements relate to the authorisation details such as the name and address of the person who authorised the how-to-vote card, and to the extent necessary, the political party of the candidate, and if the candidate is not endorsed by a registered political party, then the name of the candidate with the ‘candidate’ included (**new subsection 328B(1)**).

New subsection 328(2) stipulates font requirements.

As discussed above, offences are created for not meeting the requirements of these new provisions, and also for providing some or all false authorisation details (see in particular **new paragraph 328B(5)(d)**)

Schedule 2 – Misleading or deceptive publication

Items 2 and **(4)** have the effect of inserting the additional words ‘internet or telephone’ into the Electoral Act and the Referendum Act into the meaning of the word ‘publish’ in the relevant provisions. This means that ‘publish’ will be expanded to include not only radio, television, but also internet or telephone (see discussion above).

49. Subsection 329(6), *Commonwealth Electoral Act 1918*, subsection 122(7), *Referendum (Machinery Provisions) Act 1984*. The provisions do not state that publish ‘means’ radio and television rather, that it ‘includes’ those forms, which is much broader.

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